



**Medical Quality Assurance Commission
Friday July 13, 2007
Business Meeting Minutes**

Medical Commission Members

Cabell Tennis, Public Member, Chair
Les Burger, MD, 2nd Vice-Chair
Frederick H. Dore, Jr., MD
Ellen Harder, PA-C
Judith Page, Public Member
Theresa Elders, Public Member
Rogelio Ruvalcaba, MD
Thomas Green, MD –Absent
Linda Ruiz, Public Member
Frank Hensley, Public Member

Samuel Selinger, MD, 1st Vice Chair
Kenneth Cogen, MD--Absent
Susan Harvey, MD--Absent
Hampton Irwin, MD
Chelle Moat, MD
William Gotthold, MD
Judy Tobin, Public Member
Bruce Cullen, MD
Athalia Clower, PA-C

Department of Health Staff:

Blake Maresh, Executive Director
Maryella Jansen, Deputy Exec Director
Cindy Hamilton, Compliance Officer
Karl Hoehn, Legal Services Manager
Dani Newman, Compliance Officer

Beverly Thomas, Program Manager
George Heye, MD Medical Consultant
Michael Farrell, Staff Attorney
Mike Weisman, Staff Attorney
Erin Obenland, Disciplinary Manager

Others in Attendance

Pamela Anderson, AAG

Kim O'Neal, AAG

BUSINESS MEETING
CALL TO ORDER

Commission Chair Cabell Tennis, JD called the meeting of Washington State Medical Quality assurance Commission (MQAC) to order at 08:00 a.m. on July 13, 2007 at the Davenport Hotel, 10 South Post Street, Spokane Washington.

1.0 CHAIR REPORT

The Chair opened the meeting with his report. He reminded the Commission of the Executive Session in which they discussed the removal of Mike Bahn, Staff Attorney from his work with the Commission and had been authorized to send a letter to Secretary Mary Selecky with a copy to the Governor expressing strong concerns. He reported that the letter had been sent on June 25, 2007 and no response has been

received to date. He asked the Commission to approve appending the letter to the minutes.

The Chair reported that at the last business meeting the Commission agreed to the possibility of mediation by an outside independent source to help resolve the difficulties with the Department of Health. He reported that Blake Maresh, Executive Director has been working on this possibility.

The Chair reported receiving a letter from Mike Bahn expressing his gratitude for his relationship with the Commission which he found interesting, challenging, and professionally fulfilling. Mr. Bahn appreciated the support he was given during his bout with tongue cancer. Mr. Bahn also expressed best wishes in the Commission's efforts to strengthen their relationship with the Department of Health to better fulfill the Commission's mission to protect the public.

The Chair reported meeting with Representative Jamie Pederson in Olympia to discuss his concerns and the hope for a resolution of this continuing conflict. He stated he had reported the meeting to Blake Maresh, Executive Director to meet the requirements to the Public Disclosure Commission. The Chair also mentioned that Frank Hensley is working on a list of key persons in the legislature and developing talking points to use in any meeting Commission members may have with a legislator. He stated the need to report all such contacts or meetings to Mr. Maresh.

The Chair reported on a newspaper article written in response to a summary action on a respondent. He indicated that he had asked for a summary of the history of the complaints concerning the respondent in order to understand actions that have been taken in the past. He reported receiving some information, but that it was not complete. The Chair expressed concern that the article implied the Commission could have taken additional disciplinary action against the practitioner in response to prior complaints. He also reported on his contact with Claudia Rowe of the Seattle Post Intelligencer. The Chair affirmed the value of the press in reporting on health discipline cases and the work of the Commission. He also protested the inaccurate headline on her article; the headline stated that the practitioner kept his license after being incarcerated. She responded that headlines were the work of another department. "

The Chair stated his deep concerns at the level of conflict which continues to overshadow the Commission's important work of regulating the practice of medicine which includes the licensing and discipline of physicians in the state of Washington. He stated that the Commission needs good and faithful support in partnership with the Department of Health to do this work. The Chair mentioned that he hopes that they will be able to negotiate a new joint operating agreement that will establish structures in the partnership with the Department that will enable both to serve the public in the work we have been given to do. The Chair made the following two motions:

MOTION: The Chair entertained a motion to include the letter to Mary Selecky, Secretary of Department of Health as an appendage to the minutes. The motion was seconded and approved.

MOTION: The Chair entertained a motion to take the following resolution: “Resolved that the Medical Quality Assurance Commission expresses its great appreciation for the work of attorney Mike Bahn over the years he has supported the Commission with his legal services. While the Commission deeply regrets his absence from the cases we process and the other regulatory matters that the Commission oversees, the Commission nevertheless wishes him great personal reward and success as he continues to serve the people of the state of Washington.” The motion was seconded and approved.

June 25, 2007

The Honorable Mary Selecky,
Secretary of the Department of Health
P.O. Box 47890
Olympia WA, 98504

This letter comes to you from a strong resolve of the Medical Quality Assurance Commission in an executive session of our regular business meeting on Friday June 1, 2007. The precipitating cause was the preemptory and sudden removal of staff attorney Mike Bahn from his work with the Commission, including the abrupt end of work he was doing on cases with several members of the Commission. This action by the Department of Health raises imported concerns with respect to the quality of our support from the department and our continuing relationship as partners in the work of regulating the practice of medicine and protecting the public safety under RCW 18.71.002, quoted at the bottom of this page.

The removal of staff attorney Bahn was poor service from the Department of Health. There was no prior consultation with the officers of the Commission. That was no notice to those members of the Commission having cases with Mr. Bahn. There was no notice to the Responding Commission Members of the reassignment of those cases to other staff attorneys. There was no inquiry as to the impact that this might have on the protection of the public by delay and confusion in bringing on new attorneys in highly complex cases. I had a follow-up conference with the supervising staff attorney Karl Hoehn in which I reviewed these matters with him. I did not receive any explanation for the decision and its implementation. I think that he understood the concerns I expressed. The Commission is alarmed at this poor quality of service from the Department and asks for your response.

The Commission is also concerned that this event is yet one more example of the troubled relationship between it and the Department of Health. We understand that the Legislature has placed us in a partnership. We understand that partnership means collaborative decision-making within the scope of each partner’s responsibility and continuing consultation. We have heard that you have spoken publicly in support of partnerships within State government.

We affirm that point of view and hope that it may be implemented in our relationship with you and the Department you serve.

Finally this action would seem to be in violation of the joint operating agreement between the Commission and the Department that was signed by both parties in April 1992. Some of the relevant provisions follow:

“The Director of PLS shall consult with the Executive Director and the Board Chairs in proposing the grades and qualifications of the employees working for the Boards to the Department of Personnel.”

“The Director of PLS shall collaborate with the Boards and the Executive Director in establishing training programs and continuing education programs for all personnel whom the Secretary and the Boards jointly agree require such.”

“The Director shall consult with the Board chairs in the selection of the remaining budgeted personnel for the Boards.”

“The Secretary shall consult with the Executive Director regarding the evaluation, dismissal, hiring, transferring and promotion of the all staff providing direct support to the Boards to the extent not expressly prohibited by merit system or rules.”

“The Secretary shall assist the Boards in negotiating with the Office of the Attorney General as to who shall provide such services to the Boards as is required by law. To the greatest extent possible, the Secretary shall follow the requests and recommendations of the Boards regarding their legal needs.”

We believe that a fair reading of the provisions of this joint operating agreement raises serious questions as to the legality of the decision that concerns us. Surely it requires different behavior in the future and must be addressed in our negotiations.

The Commission understands that you are open to an independent third party mediation, possibly with Harvard University facilitation. We believe that this would be an excellent path for us to follow as we move toward the required review and renewal of our joint operating agreement. We earnestly expect to create and sustain a true partnership in the work we have been given to do. I hope and trust that we can move in this direction as soon as practical.

Cabell Tennis,
Chair of the Medical Quality Assurance Commission
841 33rd Avenue East
Seattle, WA 98112

Cc: The Honorable Christine O. Gregoire, Governor

2.0 CONSENT AGENDA

The consent agenda contained the following items for approval:

- 2.1** Agenda for July 13, 2007.
- 2.2** Minutes from the June 1, 2007, business meeting
- 2.3** Ratifications of Licenses

MOTION: The Chair entertained a motion to approve the consent agenda as amended. The motion was seconded and approved.

3.0 PHYSICIAN ASSISTANT ADVISORY COMMITTEE REPORT

Ellen Harder, PA-C reported on the first meeting of the Physician Assistant Advisory Committee. She indicated that there needs to be a physician and a public member on the committee. Ms. Harder reported a good amount of work on the rules will be done. The rules for Physician Assistant and Physician Assistant Certified should be combined rather than separate because of the 1999 requirement to pass the National Committee of Certified Physician Assistants (NCCPA) examination within one year of licensure. The committee also discussed revising the rules to meet today's practice standards and in plain talk; areas identified were remote sites verses rural areas, supervising verses sponsoring, practice issues, delegation, group delegation and physician assistant hospitalists. The committee discussed past history of the Advisory Committee and the need for more work. Ms. Harder reported the next meeting will be October 17, 2007 at 10:00 a.m. The Committee elected Teresa Vance, PA-C as the Committee chair and Ruth Ballweg, PA-C as vice-chair. The purposed of this committee is to make recommendations to the Commission on rules, practice standards and policies as it relates to the practice of a physician assistant.

4.0 TASK GROUPS

4.1 Joint Operating Committee

Frank Hensley, Chair, Public Member reported on the two subjects the group discussed. The first question, "Who should be at the table during the negotiations". Mr. Hensley reported that the group felt the Assistant Attorney General should be there for a resource and possibly representatives from the Office of Financial Management (OFM) and the Governor's Office. He stated the group felt it is important the individuals at the table should have authority to make decisions on behalf of each respective party.

The second question, "What should be the areas of discussion." Mr. Hensley reported the group identified the following areas:

- Improve communication between the Commission and the Department.
- Dedicated staff, being involved in staffing decisions, input on the performance evaluations for dedicated staff.

- Dedicated Executive Director
- Clarifying the roles in the rules and policy process to eliminate the layers and last minute needed changes which could start the process over again.
- Budget-with regard to the Commission's involvement in its own budget process.

4.2 Finance

Les Burger, MD, Chair, reported on the two areas of focus the group discussed. Dr. Burger reported the need for Commission and staff to attend a variety of constituent groups, associations, and medical societies to provide information about the work and the role of the Commission. Sam Selinger, MD reported that he and Dr. Rick Dore worked with Mike Farrell, Staff Attorney in the same kind of presentation for the Doctors Company during their mandatory risk management courses. He felt they were well received. Dr. Burger asked for the power point presentation to be sent to him. He reported that the estimated cost associated with the travel and time for these presentations would be approximately \$20,000. He asked the Commission to agree to support this project.

MOTION: The Commission moved and seconded for \$20,000 to be earmarked for this project, which the Commission hopes to begin sometime in September.

Dr. Burger reported the group's desire to have an electronic and paper newsletter be sent on an ongoing basis to the licensed physicians, physician assistants and their constituents. Mr. Maresh and Ms. Thomas reported on the newsletter the Nursing Commission crated using a company that solicits advertisements that are specifically approved by the Nursing Commission to offset the cost of the newsletter at no charge to the Department. Dr. Selinger stated he was uncomfortable using advertisements. Dr. Moat suggested bringing back copies from the company that are specific for physicians and copies of the Commission's past newsletters. He indicated the group will continue in this research and bring back more information. Ms. Thomas will share copies of previous newsletters at the next meeting.

4.3 Continuing Competency

Chelle Moat, MD, Chair reported that there had been binders made and distributed to the group containing information pertinent to this research. She indicated this will most likely be a two year project.

4.4 Sanction Guidelines

Judy Tobin, Chair, Public Member had nothing to report at this time.

4.5 Office Based Surgery Rules

Hampton Irwin, MD Chair deferred to Ms Thomas for the report. Ms Thomas reported that Bruce Cullen, MD, Dr. Irwin, Mr. Farrell, Mr. Maresh and she will be on the task group with Facilities Services and Licensing on the new legislation regarding Ambulatory Surgical Centers and Office Based Surgery. Ms. Thomas indicated that she understands this task group will help clearly define the line where ambulatory surgical centers end and the office based surgery begins in hope not to overlap areas in the rules or leave gaps. She indicated the task group has to complete its research and report its findings by December 15, 2007 to the legislature.

4.6 Non-Surgical Cosmetic Procedures Rules

Dr. Selinger reported that the next public rules workshop will be held today, July 13, 2007, at 1:30 p.m. He also indicated that delegation continues to be a problem.

5.0 OTHER BUSINESS

5.1 2007 Election for the Chair, 1st Vice-Chair and 2nd Vice-Chair.

Dr. Moat reported the nominees for the Commission officers are as follows: Cabell Tennis, J.D. for Chair, Sam Selinger, MD for 1st Vice-Chair and Les Burger, MD for 2nd Vice-Chair. The nominations were moved and seconded and unanimously passed.

5.2 Department of Licensing Proposed Rules for Estheticians

Mr. Maresh reported that the letter authorized last meeting was sent to the Department of Licensing (DOL) prior to their rules hearing held on June 11, 2007. The DOL revised the proposed rule under WAC 208-20-110(20), medical devices. DOL is adding that “prescriptive” devices must be “used within the scope of RCW 18.16.020)(12) practice of esthetics. DOL believes this will clarify that the “prescriptive” tools indicated in the proposed rules are only those devices allowed within the scope of esthetics. Pam Anderson, AAG reported on her conversations with the Department of Licensing advisor Bruce Turcott, AAG on this issue.

5.3 Citizen Advocacy Center

Ms. Thomas requested any member wishing to attend the annual meeting of the Citizen Advocacy Center on October 29-31, 2007 at the Edgewater Hotel, Seattle Washington please contact her by September 1, 2007 in order for the registration to be completed timely.

5.4 Petition for Adoption, Amendment, or Repeal of a State Administrative Rule

Ms. Thomas reported that the Commission had received a request to require all patients to have a second opinion by a specialist for any recommended surgery and request that patients should be given handouts in layman’s terms about what the surgery is; what non-surgical options they have and the current success rates and risks of their recommended surgery. The

Commission deferred the request to the Policy Committee for consideration.

5.5 Delegation by Physicians to Other Health Care Providers

Mr. Maresh reported that a memorandum from State Health officer Maxine Hayes, MD, MPH was sent to health care providers on June 1, 2007 regarding the Administration of the Rota Teq Vaccine for the prevention of rotavirus gastroenteritis. (Administered orally).

The memo also included a statement that health care providers authorized to prescribe may only delegate the administration of the vaccine to other health care practitioners with a scope of practice that specifically includes the administration of oral medication. The memo stated that under Washington law, the administration of oral vaccinations can be delegated to registered nurses, licensed practice nurses, and nursing technologists (nursing students, if oral administration has been covered in the education and training.)

The memo stated that licensed health care assistants and unlicensed staff have strict limitations on the activities they may perform. They are not allowed by law to administer oral medications, including oral vaccines.

Mr. Maresh then reported that on the Washington State Society of Medical Assistants website it states that the information on the notice sent to clinics was incorrect. It further asserts that the Medical Practice Act gives physicians the legal right to delegate to medical assistant or health care assistant any duty that does not constitute the practice of medicine. Mr. Maresh indicated that the Department is working on this issue.

Beverly Thomas, Program Manager also reported that she receives multiple calls each week inquiring whether a physician may delegate medical procedures to health care assistants or medical assistants that is not within their scope of practice or is considered the practice of medicine. She indicated that during the laser rules process she learned that is a concern of inappropriate delegation by physicians as a whole. She recommended that the Commission consider possible rules to address appropriate delegation.

By consensus the Commission stated that administering oral vaccines constitutes the practice of medicine and that the Policy Committee considers possible rules regarding delegation. They also requested that the memorandum from State Health Officer Maxine Hayes, MD, MPH, be placed on the Department's website as well as the websites of the health care professions involved. She asked to know if the Commission was more or less stringent than the guidelines. She also expressed a concern about the additional burden the guidelines have on physicians when suspended for at least two years because specialty boards and licensing requirements will look at additional requirements for practitioners out of practice beyond two years.

5.6 Sanctioning Guidelines

Karl Hoehn, Legal Services Manager will present the most recent statistics to the Department of Health Sanctioning Guidelines. Mr. Hoehn was asked to bring back the specific data on where the Commission's compliance with the Department of Health Sanctioning Guidelines; as well as the comparison to the other professions.

5.7 Delegation of Signature Authority for Credentialing, Disciplinary and Rulemaking MD2007-05

Ms. Thomas reported on a recent HPQA policy that requires the Boards and Commission to approve each request for lists and labels by continuing medical educational or professional organizations on each business meeting agenda or to delegate its approval decision authority to its staff. The Commission requested that the written delegation be brought back with specific names tied to specific duties.

By consensus, the Commission approved and delegated to Ms. Thomas the approval decision authority for lists and labels requests to those continuing medical education or professional organizations.

5.8 Legislative Report

Mr. Maresh stated for the interest of time he deferred the report until another time. Mr. Maresh was asked what the status was of the implementation of the legislation that requires physicians to pay a surcharge to have access to the University of Washington Medical School library. He reported that he was not sure and he would report on it at the next meeting.

6.0 MEMBERS REPORT

Mr. Hensley asked the Chair to invite the leadership of the Washington State Medical Association (WSMA) and Legislators and their staff to attend the case review meetings of the Commission. He indicated they could sign the confidential waiver not to divulge information they might hear during the sessions. He also suggested that there be a structured meeting before attending the case reviews and to debrief afterwards. Dr. Moat reported that is the way the Department and Commission had done the legislative visits in the past. Mr. Maresh had indicated he had approached the department on the concept of inviting Legislators.

MOTION: The Chair entertained a motion to invite WSMA leadership and Legislators and Legislative staff to attend a case review session of the Commission. The motion was seconded and approved.

MOTION: The Chair entertained a motion to refer the structure of the meeting with the WSMA leadership and Legislators to the Executive Committee. The motion was seconded and approved.

7.0 STAFF MEMBER REPORTS

7.1 Executive Director Report

Mr. Maresh reported on his contact with Leonard J. Marcus, Ph.D, author of The Walk in the Woods: A Step-By-Step Method To Guide Interest-Based Negotiation and Conflict Resolutions. He indicated that the costs for the process will be substantial and that he had proposed an allotment of \$35,000. He is in the process of exploring a contract. The Commission asked if the Department will be sharing the cost.

7.2 Deputy Executive Director's Report

Ms. Jansen reported that when Erin Obenland, Disciplinary Manager and Robert Horner, Licensing Manager joined Section 5 in March they were tasked with proposing changes to the business practices within the case management unit and the credentialing unit. They have been with the Commission for four months and are doing a good job to meet the goal to improve the way Section 5 does business. In keeping with the Commission's goal to do its job and do it well, Erin Obenland has proposed changes for greater efficiency and time management such as combining the Case Management Team meeting and the Initial Review Panel meeting. Ms. Obenland has identified the need to expand the hearing schedule to include hearing dates between Commission meetings. Ms. Jansen deferred the rest of her report to Ms. Obenland who spoke to the rationale for additional hearing dates and the process of identifying Commissioners willing to commit to hearing dates between meetings

7.3 Assistant Attorney General Report

Ms. Anderson, AAG had nothing more to report. The Chair expressed appreciation for the great work Ms. Anderson does for the Commission.

7.4 Program Manager Report

Ms. Thomas reported the second public rules workshop for the Non-Surgical Cosmetic Procedures will be held today at 1:30 p.m. and welcomes any member to attend.

7.5 Disciplinary Manager Report

Erin Obenland, Disciplinary Manager reported the combination of the Initial Review Panels and the Case Management Teams to Wednesday mornings at 9:20 a.m. She said there needs to be at least three members and one of them need to be a clinical member. She passed around a sign up sheet and reported that she would send a sign up sheet around at each meeting.

7.6 Medical Consultant Report

George Heye, MD, Medical Consultant had nothing to report

8.0 ADJOURNMENT

The Chair reported that he would work with Ms. Thomas on extending the business meeting time so that it does not interfere with scheduled compliance appearances for the next meeting. The Chair called the meeting to adjourn at 10:35 a.m.

Respectfully submitted by:

Beverly A. Thomas, Program Manager

Cabell Tennis, JD, Chair
Medical Quality Assurance Commission
Approved August 24, 2007